

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of the Fair Hearing Request of:

LINDSAY S.

Claimant,

v.

WESTSIDE REGIONAL CENTER,

Service Agency.

OAH Case No. 2006030156

**DECISION**

Robert S. Eisman, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter at the Westside Regional Center in Culver City, California, on April 10, 2006.

Lisa Basiri, a Quality Assurance Specialist/Fair Hearing Coordinator at the Westside Regional Center (service agency or WRC), represented the service agency.

Aviva S. (claimant's mother) represented Lindsay S. (claimant).<sup>1</sup>

The service agency and claimant offered documents and sworn testimony, and argued the case. The record was closed and the matter submitted on April 10, 2006.

**ISSUE**

The following issues are to be resolved:

---

<sup>1</sup> Claimant and members of claimant's family are referred to by their first names and the first initial of their last name to protect their privacy. Claimant's relatives are also identified by their relationship to claimant.

1. Should the service agency fund claimant's respite services, which are provided through Maxim Healthcare Systems, Inc., at a rate, such that claimant's respite worker gets paid \$8.98 per hour instead of the current rate of reimbursement, which is \$8.57 per hour?

2. Should the service agency reimburse the respite vendor, Maxim Healthcare Systems, Inc., the difference between the two rates set forth in Issue 1, for all respite services provided to claimant since January 1, 2005?

#### EVIDENCE

1. Claimant exhibits 1 through P.
2. Service agency exhibits 1 through 5.
3. Testimony of Aviva S.
4. Testimony of Lisa Basiri.

#### FACTUAL FINDINGS

The following facts were determined by a preponderance of the evidence:

1. Claimant Lindsay S. is a 22 year-old female, born on June 28, 1983, who has been a consumer of the Westside Regional Center since shortly after birth, when she was diagnosed with cerebral palsy. Claimant lives at home with her mother and 21 year-old sister.

Claimant attends the University of California, Los Angeles, where she is in her senior year and majors in public policy and Scandinavian (Swedish) studies.

2. In addition to cerebral palsy, claimant has mild developmental delays and several conditions that pose problems in her daily living, including painful spasms, congenital cataracts, hearing loss, visual paralysis, and possible mild retardation.<sup>2</sup> Although well-educated, claimant requires constant monitoring and supervision for safety. She has trouble thinking on her feet and mentally processing multiple simultaneous inputs. When overloaded with inputs from her environment, claimant typically has a "freeze" response.

Although claimant has worked hard and demonstrated strong motivation to succeed in achieving independence, she admits that she still needs help to overcome her disabilities. She attributes much of her successful habilitation to the years of services and

---

<sup>2</sup> Claimant's mother testified that claimant had mild mental retardation. The service agency questioned that diagnosis because claimant's service agency file did not evidence such a disability.

supports she has received from the service agency. There is no doubt that claimant's mother's loving concern and care are also key ingredients in claimant's continued progress.

3. Claimant has been receiving respite services, funded by the service agency, since the early 1990's. Beginning in 1994, she received 14 hours of respite per month. As the result of a fair hearing Decision, in 1999 the service agency increased the level of claimant's respite to 21 hours per month.

Claimant's current Individual Program Plan (IPP) was last reviewed at an IPP team meeting on June 17, 2005. According to the IPP, the service agency agreed to provide the following respite services to claimant:

**2. Lindsay will have supervision when requested by her mother while living at home.**

2.1 Lindsay will continue to receive 21 hours monthly of in home respite through MAXIM. These services have been in effect since 1-1-05 through 7-31-05 at an hourly rate of \$8.57 per hour plus hourly administrative fees.

2.2 WRC will continue to authorize funding through MAXIM as of 8-1-05 through 7-31-06 at an hourly rate of \$8.57 per hour plus hourly administrative fees.

2.3 Respite provider will be employed directly through MAXIM.  
[Emphasis in original.]

Claimant, her service coordinator at the time (Helen Leichter), and a WRC supervisor (Joel A. Germond, Psy.D.), signed the IPP agreement form. However, claimant's mother testified that when claimant signed the IPP, she understood it to merely be an acknowledgement that she attended the meeting. Claimant did not intend it to represent her agreement with the contents of the IPP. The signed IPP did not contain any notes or comments indicating that claimant had disagreed with any of the outcomes or supports listed in the IPP.

4. At the June 2005 IPP meeting, Helen Leichter told claimant that the IPP would be sent to her in the mail. However, the service agency did not send the IPP to claimant until late-January 2006, after a new service coordinator was assigned to claimant.

5. Since 1998, Harry Boxer has been providing direct respite services for claimant. Claimant's mother describes Mr. Boxer as a senior citizen, minimum-wage worker, who receives governmental benefits, including Medicare. No evidence was presented to indicate that Mr. Boxer has special qualifications that would warrant

payments above the base reimbursement rate for respite workers (i.e., he was not a registered nurse or specialized therapist).

6. Beginning in 1998, and continuing through December 31, 2004, Mr. Boxer was an independent contractor vendored to provide respite services for claimant. He received reimbursements for respite services directly from the service agency at the rate of \$8.98 per hour. According to claimant's mother, this hourly rate was a "net" amount (i.e., after deductions).

7. The State of California receives federal funds to supplement certain programs that the service agency provides to its consumers. In order to qualify for the federal funds the State of California must adhere to stringent reporting requirements. In late 2004, California Code of Regulations, title 17, sections 50604, 50605, 54310, 54320, 54326, 54332, and 54355, among other sections, were modified to ensure compliance with federal reporting requirements. The regulations now require complete service records be kept to support all billings, including the identification of the consumer and a record of services provided to the consumer, including the date, time, location and hourly units of respite services provided. Family members providing direct care must use a specific billing form and must maintain copies of respite service records for five years. Families arranging for parental vouchered respite must complete and submit a Home and Community-Based Services Provider Agreement. Additionally, under the regulations, voucher recipients must provide worker's compensation insurance to employees and withhold federal, state and local taxes.

8. The agency and many parents shared concerns over the new reporting requirements. The agency was concerned about losing federal funding if there was a lack of compliance with the reporting requirements. In answer to the concerns about the reporting requirements, the agency developed a "preferred provider" program. In claimant's case, the preferred provider program would allow claimant to keep the same respite provider, Mr. Boxer. However, the record keeping functions would be accomplished by one of several agencies authorized to do the record keeping in strict conformity with federal requirements.

9. As part of its preferred provider program, during November through December 2004, the service agency transitioned to a new system for the delivery of respite, specialized services, and personal assistance to service agency consumers. Under the new system, the service agency contracted with Maxim Healthcare Systems, Inc. (Maxim) as the preferred provider for those services. Sometime prior to October 13, 2004, the service agency distributed an undated notice to respite providers and service agency consumers from Mary Rollins, Director of Client Services, Westside Regional Center. The notice alerted independent contractors providing respite services about this change. The notice also informed respite providers and families that the service agency was going to hold a meeting to answer questions about the forthcoming changes, and that consumers could also contact their service coordinators for information. The notice stated, in pertinent part:

In order to meet the new provisions of the *California Code of Regulations Title 17, Division 2, Chapter 1: General Provisions*, WRC has found it necessary to contract with an agency for Respite, Specialized Supervision and Personal Assistant.

Providers will, therefore, have to be employed by this agency [Maxim] to provide the above services. . . .

An Application has been enclosed for you to complete and return to WRC Community Service Department. . . . Your gross salary will be \$8.57 per hour minus all normal employee deductions (Federal taxes, State taxes, etc.) The reduction from a gross of \$8.98 per hour is because you no longer have the expenses associated with an independent contractor since you will now be an employee. . . . **If you have already completed the application process with an approved agency (Maxim Healthcare), please disregard this notice.** [Emphasis in original.]

10. At the meeting referenced in Ms. Rollins' notice, the service agency provided attendees with a packet of documents that would need to be completed and submitted if a parent wanted to be vendored as a provider of in-home respite.

11. Claimant's mother testified that she did not receive and was not aware of Mary Rollins' letter. She also was not notified of the meeting referenced in Ms. Rollins' letter. Ms. Basiri testified that no separate letter was sent to families, advising them of the option to become a parent vendor for in-home respite.

12. While it is not known if Mr. Boxer received a copy of the notice distributed by the service agency, Mr. Boxer did become an employee of Maxim and, beginning in January 2005, started providing respite services for claimant through Maxim at the gross rate of \$8.57 per hour. As an employee of Maxim, for each 21 hours of respite services Mr. Boxer provided for claimant, he received a gross reimbursement of \$179.97, from which approximately \$20 was taken for deductions, resulting in a net pay of \$157.

13. Prior to becoming an employee of Maxim, for each 21 hours of respite services Mr. Boxer provided for claimant, he received a gross reimbursement of \$188.58. Therefore, under Maxim, Mr. Boxer's gross monthly income from providing respite services for claimant was reduced by only \$8.61. Maxim deducted Federal and State income tax withholding and other taxes from claimant's monthly reimbursement. When claimant was an independent contractor and received reimbursements directly from the service agency, he was liable for all applicable deductions. If certain deductions should not have been made by Maxim, it was Mr. Boxer's responsibility to address that issue with his employer.

14. If claimant's mother had known and availed herself of the option to become a parent-vendor for in-home respite, she would have received monthly reimbursements from the service agency and would have been responsible for tax withholding and other applicable deductions from Mr. Boxer's pay prior to disbursing funds to him.

15. Claimant's mother testified that she was not aware of Mary Rollins' notice to respite providers and that if she had been aware of it, she would have appealed the change in Mr. Boxer's reimbursement rate at the time the notice was issued.

16. In May 2005, claimant's mother first became aware of the decreased net salary that Mr. Boxer received as a respite worker under Maxim. Mr. Boxer did not receive his first disbursements from Maxim until mid-May 2005, which were for respite services he rendered during January through April 2005.

17. Claimant's mother elected to reimburse Mr. Boxer to make up the difference in the decreased net earnings that was imposed on him through the service agency's use of Maxim. However, claimant's mother expected to eventually be reimbursed by the service agency, that is, when the issue of the pay difference would be resolved in her favor.

18. Claimant's mother contacted claimant's service coordinator, Helen Leichter, to express her concerns regarding the change in reimbursement rates. Ms. Leichter replied by advising claimant's mother that she would try to get the rate increased, but that claimant's mother should address the issue at claimant's annual IPP. Unfortunately, Ms. Leichter then no longer communicated with claimant's mother. She did not return claimant's mother's telephone calls, did not provide her with an application for an appeal, and allegedly failed to document claimant's mother's contacts / attempted contacts in the service agency's Interdisciplinary Notes, which form part of claimant's file with the service agency.<sup>3</sup>

19. After Helen Leichter told claimant's mother that she would try to get Mr. Boxer's respite rate increased, claimant's mother did not submit Mr. Boxer's time cards to the service agency. She did not want to submit the time cards because she wanted to wait until she had a decision from the service agency regarding the reimbursement rate increase. As a result, Mr. Boxer did not get reimbursed from Maxim for the months when his time cards were not submitted (i.e., June through October 2005). Instead, claimant's mother paid him directly, at the rate of \$188.58 per month (i.e., based on Mr. Boxer's previous rate of \$8.98 per hour).

---

<sup>3</sup> Although claimant's mother did not subpoena the Interdisciplinary Notes, she requested to see them during the hearing. The service agency's representative denied access to the file because claimant was an adult and there was no evidence she assented to release of the records to her mother. In any event, even if claimant would have been successful in establishing that the service coordinator was negligent in documenting the contacts and attempted contacts by claimant's mother, it would not have changed the outcome in this matter.

20. Claimant's mother did not contact Maxim regarding her concern about Mr. Boxer's wages. Instead, she continued to wait for a response from the service agency, but none was forthcoming.

21. In late December 2005, claimant sent a letter to Dr. Germond, wherein she expressed her and her mother's displeasure with Helen Leichter, and requested that claimant's service coordinator be changed, preferably to Crystal Robertson. The service agency subsequently appointed Ms. Robertson as claimant's service coordinator.

22. When Ms. Robertson became aware of claimant's mother's concern regarding Mr. Boxer's reimbursement rate, she advised claimant's mother to submit Mr. Boxer's time cards for the five months she had not submitted them to the service agency, as soon as possible. She also told claimant's mother to have Mr. Boxer submit a letter regarding the reimbursement issue to the service agency.

23. Claimant's mother then provided the service agency with Mr. Boxer's time cards for June, July, August, September, and October 2005 (21 hours each month). In a letter dated January 17, 2006, Mr. Boxer advised Ms. Robertson that he had not submitted time cards because he had been waiting for approval of a rate change from the service agency.

24. After the service agency's Purchase of Service Committee considered claimant's request for an increased hourly rate for Mr. Boxer, Ms. Robertson notified claimant in a letter and Notice of Proposed Action dated January 26, 2006, that the request was denied. The reason given for the denial was that "based on consumer's age, lack of maladaptive behaviors, and high developmental level, there is no reason to pay above WRC's standard Maxim rate (12.50 per hour with \$8.57 to provider)."

25. Claimant's mother contends that the basis for the service agency's denial of claimant's request for increased funding was not correct in that it did not take into account claimant's continuing disabilities, necessity for constant monitoring, and safety concerns. Claimant's mother was also not aware that if respite services were provided by a specially qualified person, such as a registered nurse or behaviorist, that reimbursement would be at a higher rate.

26. On February 3, 2006, claimant's mother submitted a Fair Hearing Request in which she sought to have funding for respite paid at the "highest scheduled rate." This hearing ensued.

27. Claimant's mother's and Mr. Boxer's foremost concern was and remains claimant's welfare. Their dedication to claimant overshadowed their concern for paperwork, and to the extent that she could, claimant's mother shouldered the burden of completing required reimbursement documents for Mr. Boxer. Claimant's mother contends that the service agency's lack of responsiveness to her concerns has negatively impacted her own health and provide grounds for deciding this matter in claimant's favor.

## LEGAL CONCLUSIONS

1. Jurisdiction was established to proceed in this matter, pursuant to Welfare and Institutions Code section 4710 et seq.

2. In this case, the service agency did not change the level of respite services provided to claimant, but changed the manner in which it provided and paid for those services. The change applied to all independent contractors who were providing respite services for the service agency's consumers. As soon as claimant became aware of the resulting change in Mr. Boxer's reimbursement rate, she notified the service agency of her concern. However, since the service agency did not change the amount of respite that claimant received, it thus complied with the provisions of claimant's IPP with respect to the provision of respite services.

3. California Code of Regulations, title 17, section 54355, subdivision (a), provides, in pertinent part, that the service agency may offer vouchers to family members or adult consumers to allow the families and consumers to procure their own respite services, provided that the cost of services does not exceed the cost of services the regional center would otherwise provide, and it is issued only for services which are unavailable from generic agencies. Subdivision (b) provides prospective voucher recipients with information to assist them in determining liabilities they may incur by participating in a voucher program (e.g., tax, insurance, and worker's compensation requirements).

4. Welfare and Institutions Code section 4690 states, in pertinent part:

The Director of Developmental Services shall establish, maintain, and revise, as necessary, an equitable process for setting rates of state payment for nonresidential services purchased by regional centers, and may promulgate regulations establishing program standards, or the process to be used for setting these rates, or both, in order to assure that regional centers may secure high-quality services for developmentally disabled persons from individuals or agencies vendored to provide these services.

5. Welfare and Institutions Code section 4690.2, subdivision (a) states, in pertinent part:

The Director of Developmental Services shall develop program standards and establish, maintain, and revise, as necessary, an equitable process for setting rates of state payment, based upon those standards, for in-home respite services purchased by regional centers from agencies vendored to provide these services. The Director of Developmental Services may promulgate regulations establishing these standards and the process to be used for setting rates. "In-home respite services" means intermittent or regularly scheduled temporary nonmedical care and supervision provided



in the client's own home, for a regional center client who resides with a family member. . . .

6. Welfare and Institutions Code section 4691.6, subdivision (c) states:

Notwithstanding any other provision of law or regulation, during the 2005-06 fiscal year, the department may not approve an anticipated rate adjusted for a community-based day program or in-home respite service agency provider that would result in an increase in the rate to be paid to the vendor from the rate that is in effect on or after June 30, 2005, unless the regional center demonstrates that the anticipated rate adjustment is necessary to protect the consumers' health or safety.

7. California Code of Regulations, title 17, section 57310, states, in pertinent part:

(a) Each regional center may offer vouchers to family members or adult consumers to allow the families and consumers to procure the following services:

[§] . . . [§]

(3) Respite Service - Family Member - Service Code 420 . . . .

[§] . . . [§]

(b) If a voucher is issued, the maximum reimbursement authorized by the regional center for the service provided shall be specified in the voucher and shall not exceed the maximum rate of reimbursement as specified below:

[§] . . . [§]

(3) Respite Service - Family Member - Service Code 420 - \$ 8.57 per consumer per hour, including fringe benefits, effective March 1, 2001 . . . .

8. Based on the foregoing statutes and regulations that apply to rate setting by the Director of Developmental Services, the service agency established that the rate to be paid to Mr. Boxer, as a respite worker employed by Maxim, is \$8.57 per hour.

9. It is unfortunate that claimant's mother did not receive timely notice of the change in the respite vendor program and information regarding her options, which included applying for parent-vendorization. It is also unfortunate that Ms. Leichter was non-responsive to claimant's mother's inquiries and did not explain the reasoning behind the changes made to the respite vendor program. However, the failure of the service agency to effectively communicate with claimant and her family does not establish cause to provide anything other than the reimbursement rate established by the Director of Developmental Services for respite care.

///

10. With the change in Mr. Boxer's status, from independent contractor to Maxim employee, his reimbursement rate decreased. As an independent contractor, he earned \$8.98 per hour, before taxes, but as an employee of Maxim, he received \$8.57 per hour, before taxes. It is understandable that Mr. Boxer would consider this reduction to be significant. However, when the service agency changed the manner in which it administered its respite vendor program, Mr. Boxer voluntarily elected to continue providing respite services to claimant through Maxim.

11. It is not known if the service agency disbursed funds to Maxim for the respite services Mr. Boxer provided to claimant from June through October 2005. That is an issue that the service agency will have to address with Maxim, now that the service agency has received Mr. Boxer's time cards for that period. The time cards establish that claimant received 21 hours of respite services each month.

### ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

1. Claimant's request that the service agency fund claimant's respite services, which are provided through Maxim Healthcare Systems, Inc., at a rate such that the respite worker providing services for claimant receives \$8.98 per hour, is denied.

2. Claimant's request that the service agency reimburse the respite vendor, Maxim Healthcare Systems, Inc., the difference between the \$8.98 hourly rate that claimant's respite worker received as an independent contractor, and the \$8.57 hourly rate that he received as an employee of Maxim Healthcare Systems, for all respite services provided since January 2005, is denied.

**This is a final administrative decision, each party shall be bound by this decision. Either party may appeal the decision to a court of competent jurisdiction with 90 days of receiving notice of the final decision. (Welf. & Inst. Code, § 4712.5, subd. (a).)**

April 19, 2006.

---

ROBERT S. EISMAN  
Administrative Law Judge  
Office of Administrative Hearings